

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

April 2011

Inside this issue:

UPPAC Case of the Month	2
Eye On Sexy Teacher Stories	2
Recent Education Cases	3
Your Questions	3



UPPAC CASES

Due to the Board's tight agenda in April, it did not take any action on any UP-PAC cases this month. It voted to postpone UPPAC agenda items until the month of May.

Reviewing Ethics Review

New this spring is a requirement for all up and coming educators, as well as renewing educators, to take an online ethics review put together by UPPAC. The review aims to both test and teach information regarding the Utah Educator Standards, R277-515 and R277-516. UPPAC hopes this required review will give new and renewing educators a better understanding of the rules of professional conduct expected in this profession.

The review consists of 25 multiple choice questions. If a question is answered incorrectly, the educator is taken to a screen where the correct answer is explained and the educator then answers the question again. UPPAC's intent is that the review is a learning process as much as an assessment while not adding a burden to the licensing and renewal requirements.

So administrators are aware of what their new and renewing educators are learning, the following are a few sample questions from the review. See how many you can get right! (Answers are on the last page.)

A teacher knows of two openly gay students in her class. The teacher is planning an overnight field trip and must place four students in each room. Which of the following may the teacher do, consistent with Utah Educator Standards?

- A. Allow all students to choose their roommates but notify parents that their children may have a homosexual roommate.
- B. Assign the two gay students to room together and ask for parental permission from the other potential roommates of these students.
- C. Assign the two gay students to a room with a chaperone of the opposite gender and require parental permission for all room assignments.
- D. Assign all students to rooms based on the teacher's knowledge of any known animosities and friendships.

Which of the following educators is most likely to face licensing discipline for violating Utah Educator Standards on student safety?

- A. An educator drives students across the school parking lot from an athletic field to the school building. The students are in the back of the educator's pickup with the gate down. B. An educator conducts a lab experiment with insufficient safety goggles. The educator knows there are not enough, so scales the experiment to minimize the need for the goggles. C. An educator is supervising recess. Two students get into a fist fight. While the educator is stopping the fight, another student falls from the monkey
- D. An educator sees two students walking home together after school. The educator does not stop to offer the students a ride.

An educator was convicted of a Class A misdemeanor for child neglect four years ago. This occurred after her background check was completed and she was hired for her current assignment. The educator is up for license renewal. What information must the educator provide to the Utah State Office of Education about the conviction?

- A. Nothing, because what happens outside of school is not the school's concern.
- B. Nothing because it was a misdemeanor and the educator has completed the court sentence.
- C. That the educator was convicted of a misdemeanor offense and complete and accurate information regarding the conviction.
- D. That the educator was convicted of a misdemeanor offense.

We've asked for feedback on the exam and of the 2,000 plus responses we've received, the vast majority are positive. One respondent said the test questions are issues that appear in the news all the time these days. Another said the instant feedback in reviewing incorrect answers was helpful to clarifying the correct response. Another said the review is a good way to become of aware of things as educators, and one test taker said, "I must say, I learned a few things!" And isn't that what it's all about?

Eye on Sexy Teacher Stories Around the Country

For better or for worse, sometimes the "sexiest" news stories are NOT in our backyard. This month, the Utah School Update focuses its eye on the top five headline teacher stories from around the country. While not appearing in Utah's headlines, a glimpse at what's happening elsewhere may provide us with what not-to-do so these headlines stay out-of-state. Note that some of these headlines and stories identify criminal actions or penalties. Others focus on professional consequences. Many of these situations result in both criminal and professional penalties.

#5. In New Jersey, a first grade teacher was **suspended** for posting on her facebook page that she felt like a "warden overseeing future criminals." After complaints from parents, the school put the teacher on paid administrative leave while the matter was being investigated. In a similar situation, a Pennsylvania teacher was also suspended when she

wrote on her personal blog that her students were "disengaged, lazy whiners."

#4. In Georgia, a teacher was **arrested** and jailed for spraying pepper spray into the face of a



special needs student when the student and another student were being disruptive. The spray went into the eyes of the student, who suffered from mild retardation and anxiety.

#3. A New York city teacher was arrested and led out of the building in handcuffs for telling co-workers she planned to bringing a shot-gun to work to "settle some scores." The teacher had been suspended last year for hitting a student on the hand with a ruler, and had been described as having a short fuse, but many students believe the teacher

must have been joking and that she was not the type to carry out the threat.

#2. In Connecticut, a teacher who claims to have Aspergers syndrome, a high functioning form of Autism in which social interactions can be awkward, was **put on administrative leave** for asking an overweight student if he'd eaten his homework. The comment was one in a string of disparaging comments made to students in the teacher's 32 year teaching career. The teacher claims his Aspergers makes it difficult to reach others' emotions.

#1. A teacher in Queens, New York, was **fired** for starting and maintaining a blog aimed at venting frustrations and anger at the world. The website was titled burnandrotinhell.com and drew the majority of criticism for the "Bad Teachers" and "Bad Students" category.

UPPAC Case of the Month

Sometimes what seems like the most obvious of ethical behaviors is not always so obvious when you're in the trenches. Falsifying documents, whether intentionally or as a result of poor record keeping, is unfortunately a problem UP-PAC sees on a fairly regular basis. The most recent string of cases involving falsification of documents includes some cases in which the allegations were not founded, but still serves as a reminder to enforce honest and scrupulous record keeping. Details are changed to protect identities.

In one case, a home and hospital teacher was accused of falsifying the time he spent with the home and hospital student. He kept track of his hours on a time sheet that he was to directed to have signed by the parent at the end of his visits, but the teacher asked the parent to

sign a blank time sheet, before any time was filled out. The parents later accused the teacher of taking the signed time sheet and filling in more hours than he actually spent with the student. The allegations could not be proven and the case was dismissed. But keeping an accurate account of records and getting signatures at the appropriate time is always a good professional standard.

In another case, a coach who was averse to the purchase orders required by his district, made multiple purchases for the football program, to the tune of \$20,000, getting proper signatures well after the fact and in essence, falsifying the P.O. Unfortunately, the administration willingly signed off on these P.O.'s months AFTER the purchases were made, facilitating the improper purchasing methods in violation of district pur-

chasing protocol. Clearly all actions demonstrate violation of basic standards of professionalism and ethics.

Finally, in a more drastic case, a school counselor was alleged to have falsified an entire semester of practicum hours needed for his work towards a school psychology degree. The counselor kept records of the hours supposedly spent with students in the summer, and logs of the activities and tasks performed as part of the practicum. The problem was, not a single person at the school could verify that the counselor was at the school at all during the summer semester, let alone making efforts to complete his practicum coursework and hours.

Honesty is still the best policy, especially when it comes to record keeping.

Utah State Office of Education Page 2

Recent Education Case

Monroe County Bd. Of Ed. V. K.B., (Ala. 2010). A school's alcohol policy was found to be UNCONSTITU-TIONALLY ambiguous and vague so the school board's discipline of a student for showing up to prom under the influence of alcohol was reversed.

In March, 2010, Excel High School in Alabama held its prom. When faculty members at the prom smelled alcohol among some of the students, several of them including student R.H. were asked whether they had been drinking. A breathalyzer test was administered to R.H. and revealed blood-alcohol levels of .001 and 006. R.H. was suspended for 5 days for being under the influence of alcohol in violation of the Board's alcohol policy which provided that "no student shall carry, possess, or use drugs, drug paraphernalia, or alcohol at a school function." There was never a question that R.H. did not possess alcohol at the prom. Nonetheless, a fact-finding hearing was held before the Administrative Discipline Committee, where R.H.'s suspension was upheld, and he was transferred to an alternative school for one

vear.

R.H. appealed the Board's decision to the juvenile court. The juvenile court reversed the Board's decision finding that the word "use," as set out in the Board's policy meant "to ingest alcohol while on school property or at any other school function." Because there was no evidence that R.H. ingested alcohol while on school property, the juvenile court ruled that he did not violate the Board's policy and ordered him reinstated in the school immediately. It was now the Board's turn to appeal.

The Alabama Court of Civil Appeals heard the case on appeal. The court explained that due process of law "requires fair notice that one's conduct is subject to a law or regulation" and due process is violated "when a statute or regulation is unduly vague, unreasonable, or overbroad." The court further explained that rules and regulations governing student conduct therefore must be "sufficiently definite to provide notice to reasonable students that they must conform their conduct to its requirements."

The court then noted that while the

Board had at one time a policy in place that specifically prohibited being under the influence of alcohol while at school or at a school function, similar language was not included in the policy in place at the time of the events. The question for the court was whether R.H. should have known that drinking alcohol before arriving at the prom constituted "use" of alcohol at a school function, triggering disciplinary measure. The court, agreeing with the juvenile court, concluded that the policy was unconstitutionally ambiguous and vague.



Your Questions

Q: If a student fight is caught on camera and a parent wants to see the video. do we give it to the parent or not? **A:** While the courts are not uniformly clear on this question, a surveillance camera is likely an educational record and thus protected under FERPA. Therefore, if a parent is to see the video of his/her child, the other students' faces should be blurred to protect their identity. Also, if the surveillance camera is kept for purposes of law enforcement and is maintained by a designated law enforcement branch, the video may be released but the school would be wise to let the law enforcement make

What do you do when...?

the decision about release.

Q: Is there a law that requires school districts to pay for home or hospital care for students who are out on extended sick leave?

A: Yes, if the district wants to count the student for purposes of funding and the student will be absent from school for 10 days or more, the district is to provide the student at least 120 minutes of instruction each week during the ab-

sence. However, the initial decision that the student qualifies for home/hospital belongs to the school or district.

Q: My daughter will turn 5 September 15, and I'd like to enroll her in kindergarten this year, rather than wait an entire school year when she will meet the September 1 enrollment cut-off. Are there any exceptions to this cut-off date? A: No, there are not. The September 1 cut-off is a hard and fast rule for the date by which a student must be 6 in order to enroll in kindergarten in Utah, and neither the schools nor the districts can make exceptions. If a parent feels the child is extra smart and will be leaps and

Utah State Office of Education Page 3

Utah State Office of Education

250 East 500 South P.O. Box 144200 Salt Lake City, Utah 84114-4200

Phone: 801-538-7830 Fax: 801-538-7768 Email: heidi.alder@schools.utah.gov





The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions Cont.

bounds ahead of his/her peers if he/ she starts kindergarten a year later, the parent may always have a discussion with the school district about starting the child in 1st grade the following school year. This is not a request the school district has to approve; but if the parent feels strongly about it, it may be a conversation worth having.

Q: Can a divorced parent with joint legal custody pick up his kids from school?

A: It depends. If the parents have joint legal custody AND joint physical custody, then yes, a parent CAN pick up his kids from school IF it is his day to be with the kids according to the divorce decree. Joint legal custody means the right to make major life decisions for the child jointly. Without joint physical custody, joint legal custody does not give a noncustodial parent the right to be with

the child. It would be wise for schools to keep a copy of divorce decrees on file for students with divorced parents so schools know who has both legal and physical custody of the child, and on what days. School administrators should also be very clear with parents that they will supervise students while on campus, but cannot be responsible for who picks up students if they leave school or walk home.

Q: For students, the standard for search and seizure on campus is a "reasonable suspicion" as opposed to "probable cause", the standard outside of schools. What is the standard for search and seizure for adult employees on school campuses?

A: The standard for adult employees on campus is the same as for students: "reasonable suspicion." The rationale of the landmark case regarding student's Fourth Amendment rights has been applied to non-students because

the inherent authority and responsibility of school administrators to provide a safe environment applies whether that threat stems from students or adults. Thus, a search is justified if at its inception reasonable grounds exist for suspecting that the search will turn up evidence that the employee is guilty of work-related misconduct, or that the search is necessary for a non-investigatory work-related purpose such as to retrieve a file."

ANSWERS TO ETHICS REVIEW:

- 1. D
- 2. A
- 3. C